IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20950 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUTLEJ INDUSTRIES LTD. - Petitioner(s)

Versus

PUNJAB NATIONAL BANK & 1 - Respondent(s)

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Appearance :

MR NIRAV C THAKKAR for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR SS PANESAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 20.6.2005 passed by the Banking Ombudsman passed in Complaint No.337 of

2004-05 passed under Clause 19(2) of the Banking Ombudsman Scheme, 2002 (herein after referred to as 'The Scheme of 2002') in disposing of the said complaint under Clause 19(2) of the Scheme.

2. The petitioner-company was having an account with the Punjab National Bank and was maintaining a cash credit Account No.41 with the said Punjab National Bank, G.I.D.C., Vapi and that on allegation that an amount of Rs.65.05 Lacs was unauthorizedly withdrawn from their cash credit account through various cheques bearing forged signatures which were not issued by the company, the petitioner approached the Banking Ombudsman, Ahmedabad under the aforesaid Scheme of 2002 and the petitioner sought the relief for Rs.65.05 Lacs plus interest till final payment. It appears from the record that a recovery of Rs.18.25 Lacs was made from the Accountant's account and therefore, net relief of Rs.46.80 Lacs plus interest was sought. The claim of the petitioner was based upon the deficiency in service by the aforesaid Bank. The Bank submitted the reply dated 10.11.2004 denying the allegations against the Bank Officers that they were in collusion in the alleged fraud. It was the contention on behalf of the respondent-Bank that payments of all the cheques of the company

including cheques under reference have been made in due course after verifying and comparing signatures of the authorized signatories. The Bank and its Officials have nothing to do with the alleged fraud. It appears from the record that the Banking Ombudsman tried to get the dispute amicably settled. A meeting was held on 8.12.2004 which was subsequently adjourned at the instance of the petitioner and ultimately, the next meeting was held on 28.1.2005. From the order impugned in the petition, it appears that after detailed discussion the following were agreed upon :-

(a) Since complaints are complicated further clarifications/information are required to analyse and scrutinize the complaint in detail.

(b) Both the parties will sit together and have detailed discussion and try to settle the dispute.

(c) In case it is not settled amicably, both parties will submit information as advised latest by 25/2/2005.

(d) Further course of action will be decided after receipt of information.

3. After considering the fact that the criminal complaint is already filed by the petitioner with regard

to the alleged fraud and forging of the signatures in the cheques and that the Police has filed a charge-sheet and the proceedings are pending before the competent criminal Court and after going through the evidence on record, the Banking Ombudsman found that the issues involved and the transactions concerned are complicated in nature and it is the case of alleged fraud, which requires detailed investigation and examination of the documentary and oral evidences, which is not possible owing to the limitations of the Scheme of 2002 and while observing that in view of the on going criminal proceedings in the Court, the said office is unable to adjudicate on this matter which is sub-judice and accordingly, considering Clause 19(2) of the Scheme of 2002, the Banking Ombudsman by impugned order dated 20.6.2005 disposed of the said complaint. Being aggrieved and dissatisfied with the impugned order dated 20.6.2005 passed by the Banking Ombudsman in disposing of the said complaint No.337 of 2004-05, the petitioner has filed the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

4. Shri Nirav C. Thakkar, learned advocate appearing on behalf of the petitioner has vehemently submitted that merely because a criminal complaint is filed for the

offence punishable under the provisions of the Indian Penal Code, the Banking Ombudsman was not justified in dismissing the complaint filed before it, more particularly, when the dispute falls within Clause 12(1)(f) of the Scheme of 2002. Relying upon Clause 12(1)(f), Shri Thakkar, learned advocate appearing on behalf of the petitioner has submitted that the complaint on the ground of alleged deficiency in Banking service and the claim in respect of unauthorizedly or fraudulently withdraw from the deposit account or fraudulent encashment of a cheque or a bank draft, etc., is maintainable and the same is within the jurisdiction of the Banking Ombudsman. Under the circumstances, it is submitted that the Banking Ombudsman has materially erred in disposing of the complaint without entering into and deciding it on merits. He has further submitted that so far as the dispute before the criminal Court the same is not with regard to deficiency in banking service and therefore, merely because the criminal case is pending, the Banking Ombudsman was not justified in disposing of the complaint and not deciding it on merits. Shri Thakkar, learned advocate appearing on behalf of the petitioner has relied upon the following decisions of the Hon'ble Supreme Court as well as one of the decision of the Jammu & Kasmir High Court in support of his above submissions :-

(1)***M/s. Hyderabad Commercials V/s. Indian Bank and Others*** reported in ***1991 Supp. (2) SCC P.340***.

(2)***Canara Bank V/s. Canara Sales Corporation and Others*** reported in ***(1987) 2 SCC P.666***.

(3)***Bihta Co-operative Development and Cane Marketing Union Ltd., and another V/s. Bank of Bihar and others*** reported in ***A.I.R. 1967 S.C. P.389***.

(4)***Citizen Co-operative Bank Ltd., and another V/s. Ritesh Mitall*** reported in ***A.I.R. 2993 (J. & K.) P.67***.

5. Relying upon the aforesaid decisions, Shri Thakkar has requested to allow the present Special Civil Application and to remand the matter to the Banking Ombudsman directing it to decide the complaint on merits.

6. Relying upon the judgment of **M/s. Hyderabad Commercials (Supra)**, Shri Thakkar, learned advocate appearing on behalf of the petitioner has submitted that when it is a case of making a fraudulent payment and unauthorizedly transferring the amount from the account of the customer and if the amount is not paid, apart from the Banking Ombudsman, even this Court has jurisdiction under Article 226 of the Constitution of India to direct

the Bank to make the payment of the said amount.

7. Relying upon the judgment of the Hon'ble Supreme Court in case of **Bihta Co-operative Development and Cane Marketing Union Ltd., and another (supra)**, it is submitted that as held by the Hon'ble Supreme Court if signatures on cheques or at least that of one of joint signatures to cheques are not or is not genuine, there is no mandate on the bank to pay and question of any negligence on the part of the customer would afford no defence to the bank and the banker is required to pay the said amount.

8. Relying upon the judgment of the Jammu & Kasmir High Court, Shri Thakkar has submitted to allow the present Special Civil Application as the bank is not supposed to make the payment on the basis of the cheques not signed by the account holder and/or customer and if there is a forged signature found on the cheque and the payment is made, it can be said to be deficiency in service and the bank is liable to make the payment. So far as the contention on behalf of the respondent-bank that after the filing of the present Special Civil Application, the petitioner has already availed of the alternative remedy by way of filing a complaint before the State Consumer

Forum and therefore, the present Special Civil Application is required to be dismissed is concerned, Shri Thakkar, learned advocate appearing on behalf of the petitioner has submitted that once the petition is adready admitted, the said contention is not available and the Court has to decide the matter on merits rather than dismissing it on the ground of availability of the alternative remedy.

9. Per Contra, Shri Panesar, learned advocate appearing on behalf of the respondent-Bank while supporting the impugned order passed by the Banking Ombudsman has submitted that the order passed by the Banking Ombudsman disposing of the complaint on the ground that the issues involved and the transactions concerned are complicated in nature and it requires detailed investigation and examination of the documentary and oral documents which is not possible while deciding the complaint under the aforesaid Scheme of 2002 is well within the parameters of Clause 19(2) of the Scheme of 2002. It is further submitted that the said decision is after considering the documentary evidences produced before it. He has also further submitted that apart from the fact that criminal complaint with regard to the signatures being forged on the cheques is pending before the competent criminal

Court even subsequently and during the pendency of the present Special Civil Application, the petitioner has already now approached the State Consumer Forum making an allegation against the Banking Ombudsman with regard to deficiency in service and therefore, it is requested to dismiss the present Special Civil Application.

10. Shri Panesar, learned advocate appearing on behalf of the respondent – Bank has also relied upon the opinion of the learned advocate which was obtained at the instance of the petitioner-company in which also it was opined that on account of the complexity of the matter and pending criminal investigation a very detailed consumer complaint shall have to be filed and the said complaint will have to be filed before the Consumer State Dispute Redressal Commission, Ahmedabad and therefore also, it is requested to dismiss the present Special Civil Application.

11. Heard the learned advocates appearing on behalf of the parties.

12. It is not in dispute that the petitioner-company was maintaining a cash credit Account No.41 with the respondent-Bank - Punjab National Bank, G.I.D.C., Vapi.

It is alleged that amount of Rs.65.05 Lacs has been unauthorizedly withdrawn from their cash credit account through various cheques bearing forged signatures, which were not issued by the company. It is also the contention on behalf of the petitioner that even the cheque-books were issued by the Bank without their being any request by the petitioner-company. It appears from the record that subsequently recovery of Rs.18.25 Lacs was made from the Company's Accountant's account and accordingly the petitioner prayed for relief of Rs.46.80 Lacs plus interest. It is required to be noted that it is the allegation of the respondent-Bank that the General Manager of the petitioner-company himself was involved and encouraged their Accountant to run a canteen business in the company and was also made sole representative of the company to deal with the Bank Accounts of the company and it is alleged by the Bank that the Accountant's act of omission and commission in dealing with the Bank were with the express knowledge of the General Manager of the company and both of them have acted in collusion. It is not in dispute that the petitioner-company itself has filed a criminal complaint in respect of the said transaction and even the employees of the petitioner-company were arrested subsequently and even a sizable amount i.e. Rs.18.25 Lacs was made available and

recovered from the Accountant's account. After the investigation, the investigating agency has filed a charge-sheet before the competent criminal Court also. Simultaneously, the petitioner approached the Banking Ombudsman by filing the aforesaid complaint on the ground that there was a deficiency in service and for getting Rs.46.80 Lacs plus interest. It is the contention on behalf of the petitioner that the dispute falls within Clause 12(1)(f) of the Scheme of 2002 and therefore, the Banking Ombudsman was required to decide the complaint on merits. At this stage, Clause 13 of the Scheme of 2002 is required to be considered. Considering Sub-Clause (3) of Clause 13, no complaint to the Banking Ombudsman shall lie unless the complaint does not pertain to the same subject matter, for which any proceedings before any Court, Tribunal or Arbitrator or any Forum is pending or a decree or award or a final order has already been passed by any such competent Court, Tribunal, Arbitrator or Forum. As stated above, the criminal complaint with regard to the allegation of the forging of the signature on the cheques is pending before the competent criminal Court for the same subject matter and the transaction in question. The contention on behalf of the petitioner that the complaint before the Banking Ombudsman was for deficiency in service and the same subject matter is not

before the criminal Court and therefore, merely because the complaint is filed, it cannot be said that the Banking Ombudsman has no jurisdiction. It is required to be noted that the deficiency in service cannot be the subject matter before the criminal Court, however, it is required to be noted that the said criminal complaint is for the very transaction and whether there was any forgery of signatures on the cheques, is yet to be decided and considered by the competent criminal Court. At this stage, Clause 19 of the Scheme of 2002 is required to be considered. As per Sub-Clause (2) of Clause 19, the Banking Ombudsman may reject the complaint at any stage if after consideration of the complaint and evidence produced before him the Banking Ombudsman is of the opinion that the complicated nature of the complaint requires consideration of elaborate documentary and oral evidence and the proceedings before the Banking Ombudsman are not appropriate for adjudication of such complaint and the decision of the Banking Ombudsman in this regard shall be final and binding upon the complaint and the Bank. After considering the evidence produced before the Banking Ombudsman, the Banking Ombudsman has come to the following conclusions :-

1.While the bank cleared the cheques in good faith

because of the confidence created by the Accountant of the Company with the bank officials, it appears from the report of private hand writing expert that the bank paid the cheques without properly verifying the signatures of the authorized signatories.

2. The possibility of bank officials being in collusion with the Accountant of the Company can not be ruled out.

3. It also appears that the fraud was perpetrated by the Accountant of the company with the express knowledge of higher officials and as such, the officers of the company had greater contribution in perpetration and continuation of the fraud for a long time.

13. Now, considering the aforesaid facts and the conclusions when it is found by the Banking Ombudsman that the issues involved and transaction concerned are complicated in nature and it is a case of alleged fraud and it requires detailed investigation and examination of the documentary and oral evidences and the complaint is disposed of even considering the fact that even the criminal proceedings are pending with regard to fraud and forgery of the signatures, it cannot be said that the decision of the Banking Ombudsman is so perverse or arbitrary and/or illegal or contrary to the provisions of

the Scheme of 2002 which requires interference of this Court exercising powers under Article 226 of the Constitution of India.

14. So far as the reliance placed upon the decision of the Hon'ble Supreme Court in case of **M/s Hyderabad Commercials (Supra)** is concerned, it is required to be noted that before the Hon'ble Supreme Court in that case, it was admitted by the Bank that there was unauthorized transfer of the amount from current account of the customer to another party and the Bank admitted its mistake and assured refund and inspite of that the High Court did not entertain the petition under Article 226 of the Constitution of India and to that the Hon'ble Supreme Court has held that the High Court erred in declining to exercise the jurisdiction inspite of a clear admission in writing. In the present case, there is no such admission of mistake and/or assurance of refund by the respondent-Bank and therefore, the said judgment is not of any assistance to the petitioner and the same is not applicable to the facts of the present case.

15. So far as the other judgments of the Hon'ble Supreme Court relied upon by the learned advocate appearing on behalf of the petitioners are concerned, the learned

advocate appearing on behalf of the petitioner is not in a position to satisfy this Court how the said judgments are applicable to the facts of the present case.

16. So far as the contention on behalf of the petitioner meeting that the submission on behalf of the learned advocate appearing on behalf of the respondent Bank that now when the petitioner has already availed of alternative remedy of approaching the State Consumer Forum, the petition is not required to be entertained is concerned, it is the contention on behalf of the petitioner that once the petition is admitted by this Court, the same is not required to be dismissed on the ground of availability of alternative remedy. It is required to be noted that this Court is not dismissing the present Special Civil Application only on the ground that as the petitioner has already availed of alternative remedy by way of approaching the State Consumer Forum for deficiency in service of the Bank but this Court is deciding the same on merits also after considering the order passed by the Banking Ombudsman. Availing of the alternative remedy during the pendency of the present Special Civil Application may be considered as an additional ground not to exercise the jurisdiction now as the alternative remedy is now already availed of.

17. Considering the aforesaid circumstances, more particularly, considering the pendency of the criminal case, now the filing of the complaint before the State Consumer Forum with regard to deficiency in service and considering the order passed by the Banking Ombudsman to the effect that the issues involved and the transaction concerned are complicated in nature and it is a case of alleged fraud and it requires detailed investigation and examination of the documentary and oral evidences, it cannot be said that the impugned order of the Banking Ombudsman disposing of the aforesaid complaint under Clause 19(2) of the Scheme of 2002 is in any way illegal and contrary to the Scheme of 2002. There is no illegality committed by the Banking Ombudsman in disposing of the said complaint on the aforesaid ground.

18. Under the circumstances, the present Special Civil Application is required to be dismissed and is, accordingly, dismissed. Rule is discharged.

(M.R.SHAH, J.)

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